

**504: Resolution of Complaints**

- A. Upon verifying a complaint, a LTCO shall determine a plan of action to resolve the complaint.
  - 1. The plan of action shall be mutually agreed upon by the resident and the LTCO.
  - 2. The LTCO shall consider the following factors in developing the plan of action with the resident, as appropriate:
    - a. the scope and nature of the complaint;
    - b. the history of the facility with respect to resolution of other complaints;
    - c. available remedies and resources for referral;
    - d. the individual or agency best able to resolve the complaint; and
    - e. the likelihood of retaliation against the resident or complainant.
  - 3. One or more of the following may be used to develop an appropriate plan of action in resolving complaints:
    - a. explanation -- i.e., the findings of the investigation do not indicate a need for a change or require LTCO intervention, so the resident or complainant received an explanation which satisfied/resolved the initial problem;
    - b. negotiation -- i.e., the LTCO advocates on behalf of, or with the resident or complainant with the appropriate facility staff or other relevant party to develop an agreement or course of action that resolves the

complaint;

- c. mediation -- i.e., the LTCO acts as an impartial referee between parties of equal status (i.e., between residents or between family members) to assist the parties in developing an agreement that resolves the complaint;
  - d. administrative hearings--i.e., the LTCO takes to administrative hearing an involuntary transfer or discharge or an appeal of an inadequate complaint investigation completed by the Department of Public Health;
  - e. coordination with and/or referrals to appropriate agencies--i.e., the LTCO makes a formal complaint to the Department of Public Health or Public Aid, the federal Center for Medicare and Medicaid Services or the Office of Civil Rights or any other agency; or
  - f. issues advocacy, which is discussed in Section 405 of this Manual.
- B. If the investigation of a complaint discloses information indicating that the complaint is verified, the Regional LTCOP has the responsibility to inform the resident or resident's representative of the legal, administrative, and other remedies available to the resident to resolve the complaint.
- C. The Regional LTCOP will attempt to resolve the dispute directly with the appropriate staff of the facility or other party that is the source or cause of the complaint unless the LTCO and the resident determine that another strategy would be more advantageous to the resident.
- D. Additional remedies may include:

1. when the Regional LTCOP receives a complaint or encounters a deficiency that pertains to compliance with state or federal laws, or the regulations or rules of any government agency, the matter may be referred to the appropriate federal, state, or local government agency for action in keeping with the resolution plan developed with the resident.
2. when a complaint received or an investigation reveals information in relation to the misconduct or breach of duty of any officer or employee of a facility or a government agency, the matter may be referred to the appropriate authorities for such action as may be necessary in keeping with the resolution plan developed with the resident.
3. when a complaint received or an investigation by a LTCO discloses information or facts indicating the commission of a criminal offense or a violation of standards of professional conduct, the matter may be referred to the Illinois State Police, State's Attorney, or any other law enforcement official that has jurisdiction to prosecute the crime, or to the appropriate professional licensing board in keeping with the resolution plan developed with the resident.
4. if a complaint cannot be resolved satisfactorily through negotiations with the facility or the appropriate government agency, or if an act, practice, policy or procedure of a facility or government agency does or may adversely affect the health, safety, welfare or civil or human rights of a resident or class of residents of a facility or facilities, the Regional LTCOP or Office may recommend and assist the resident in securing legal support and assistance to commence any appropriate legal actions, including injunctive relief or civil damages or actions under Part 6 of Article II of the Nursing Home Care Act or other legislation.

E. When the remedies being considered or explored by the Regional

LTCOP include the possibility of legal action or litigation, the Regional LTCOP is to consult with the Office about possible strategies and legal resources. The Office shall, in appropriate circumstances, involve the Legal Services Developer, IDoA's General Counsel and the provider agency's own legal counsel in assisting the Regional LTCOP.

- F. The resolution status of each complaint shall be documented according to the classifications listed below:
1. **Resolved.** A complaint shall be classified as "resolved" when the problem reported was addressed to the satisfaction of the resident or the complainant if the resident is not capable.
  2. **Partially resolved.** A complaint shall be classified as "partially resolved" when the problem was partially addressed to the satisfaction of the resident, complainant or the LTCO, but some aspects of the problem remain.
  3. **No action needed.** A complaint shall be classified as "no action needed" when action is neither needed nor appropriate.
  4. **Withdrawn.** A complaint shall be classified as "withdrawn" when further action is stopped, prior to resolution, by the resident or complainant or the resident dies and no further resolution is required.
  5. **Not resolved.** A complaint shall be classified as "not resolved" when the LTCO took steps to address the problem; however, for whatever reason, the problem was not addressed to the satisfaction of the resident, complainant or the LTCO.
  6. **Regulatory or legislative action required.** A complaint shall be classified as "regulatory or legislative action required"

when the complaint is not resolved and resolution will require a change of regulation or law.

#### **ABUSE/NEGLECT ISSUES**

- G. When the complaint received or an investigation conducted by the Regional LTCOP discloses information or facts indicating suspected abuse or neglect of a facility resident, the Regional LTCOP shall request that the resident, complainant or witnesses report the matter to the Department of Public Health and/or law enforcement as appropriate. The LTCO should offer assistance to any individual who wants to report abuse or neglect.
- H. When the complaint received or an investigation conducted by the Regional LTCOP discloses information or facts indicating suspected abuse or neglect of a facility resident, and the resident is unwilling to report themselves, the Regional LTCOP shall request the permission of the resident or resident representative to report suspected abuse or neglect to the Department of Public Health and/or law enforcement.
- I. When the complaint received or an investigation conducted by the Regional LTCOP discloses information or facts indicating suspected abuse or neglect of a facility resident, the Regional LTCOP shall inform all witnesses and persons with direct knowledge of the suspected abuse and neglect of the provisions under Illinois law, 210 ILCS 30/4, which requires certain persons to report suspected abuse or neglect and provides penalties for failing to report.
- J. When the complaint received or an investigation conducted by the Regional LTCOP discloses information or facts indicating suspected abuse or neglect of a facility resident, the Regional LTCOP shall advocate for and follow the resident's wishes to the extent that the resident can express them, even if the resident has limited decision-making capacity.
- K. If the Regional LTCOP has confirmed a report was made (by a copy

of the information faxed to the Department of Public Health or direct contact with Department of Public Health staff confirming their receipt of the report with the IDPH complaint number) then no further action as to the report to the Department of Public Health need be taken by the LTCO.

- L. The LTCO shall make a report of suspected abuse or neglect to the Department of Public Health for investigation if:
  - 1. the resident understands the facts;
  - 2. the resident is expressing a free choice;
  - 3. the resident understands the risks and benefits of reporting and failing to report suspected abuse and neglect; and
  - 4. the resident agrees to allow the LTCO to release her/his identity and any information permitting identification in reporting the suspected abuse or neglect.
- M. When a resident is unable to consent to a LTCO to work on a complaint directly involving the resident, the LTCO shall:
  - 1. seek evidence to indicate what the resident would have desired and, where such evidence is available, work to bring about that desire; and
  - 2. assume that the resident wishes to have her/his health, safety, welfare and rights protected and make a report to the Department of Public Health.
- N. When a resident refuses to give consent for a LTCO to report suspected abuse or neglect to the Department of Public Health, the LTCO shall:
  - 1. attempt to determine why the resident refused or withdrew consent, considering factors such as:

- a. past response of facility to complaints;
  - b. the resident's relationship with the staff;
  - c. the experience of this resident or other residents in the facility or in other facilities related to this type of complaint; and
- 2. notify the Regional Ombudsman and Office of the resident's knowing refusal to report the information to the Department of Public Health.
- O. The Regional Ombudsman will present this information to the Office within one working day with a recommendation as to whether the information should be reported to the Department of Public Health by the Office over the objections of the resident.
- P. The Office shall, in consultation with the Department's General Counsel, consider the impact on the resident, other residents, and the integrity of the LTCOP in deciding whether to file a report of suspected abuse or neglect with the Department of Public Health or other regulatory agencies. The Office's decision shall be recorded in the Regional LTCOP records.
- Q. In the case of suspected abuse or neglect of an older person residing in a suspected unlicensed facility, the LTCOP should file a report of an "unlicensed facility" with the Department of Public Health.
- R. Any LTCO who has personal knowledge of any case of alleged or suspected abuse or neglect of a person defined as an "eligible adult" pursuant to the Elder Abuse and Neglect Act (310 ILCS 20/1) shall, to the extent permitted by the applicable LTCOP confidentiality provisions of state and federal law, report and provide information on such case to the appropriate designated elder abuse provider agency.